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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,834	12/12/2003	Sam Zhadanov		2178

7590

08/18/2005

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EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,834

Applicant(s)

ZHADANOV ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,8-12,14-16 and 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,13,17,18 and 22-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Applicant's election with traverse of Species I in the reply filed on July 08, 2005 is acknowledged. The traversal is on the ground(s) that claim 1 is generic. This is not found persuasive because claim 1 has not been held allowable.

The requirement is still deemed proper and is therefore made FINAL. Accordingly, claims 2, 3, 9-11, 14-16 and 19-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

2. Claims 8 and 12 are objected to as not encompassing the elected species where applicant has stated the contrary at page 2 of the response filed July 08, 2005. Claim 8 recites an additional scrubbing element through which water "does not flow". The additional scrubbing element 4 illustrated in Figs. 2-4 and 6 allows a flow of water. Claim 12 depends from claim 8. Accordingly, claims 8 and 12 are also withdrawn from further consideration pursuant to 37 CFR 1.142(b).

3. The drawings are objected to because Fig. 1 apparently should include a "Prior Art" legend. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

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number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The disclosure is objected to because of the following informalities: Page 6, line 2, "3" apparently should be --2--.

Appropriate correction is required.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "connecting means" set forth in claim 5 could not be found in

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the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

6. Claims 1, 13, 17, 18 and 22 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a scrubbing element attached to a hand shower by a connecting element, does not reasonably provide enablement for a scrubbing element attached to a hand shower. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

7. Claims 1, 4-7, 13, 17, 18, 22 and 23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites a scrubbing element "being attached" to a showerhead. Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. The only attachment disclosed is a snap-fit (pg. 8 par. 1). There is no teaching of how to accomplish such an attachment.

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8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 4-6, 13, 17, 18 and 22-24, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Henkin et al.

The Henkin et al. (Henkin) reference discloses a hand shower comprising: a handle 202; a showerhead 204; a scrubbing element 500; a connecting element 330 including an opening 266; and connecting means 510,514, as claimed. Re claim 6, the Henkin connecting means is elastic and is therefore considered to be "snappable".

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10. Claims 1, 4-7, 13, 17 and 22, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Gentry et al.

The Gentry et al. (Gentry) reference discloses a hand shower comprising: a handle 28; a showerhead 24; a scrubbing element 40; a connecting element 34; and connecting means (col. 3 lns. 14-18), as claimed. Re claim 6, the Gentry connecting means (col. 3 lns. 38-40) appears to meet applicants' disclosed structure and is therefore considered to be "snappable". Re claim 7, the Gentry connecting means can include a holding member (col. 3 lns. 49-59).

11. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gentry and Vosbikian et al.

Although the scrubbing element of the Gentry hand shower may not include connecting means, as claimed, attention is directed to the Vosbikian et al. (Vosbikian) reference which discloses an analogous hand shower which further includes connecting means (col. 3 lns. 23-40). Therefore, in consideration of Vosbikian, it would have been obvious to one of ordinary skill in the hand shower art to associate connecting means with the Gentry hand shower in order to utilize an easy connection.

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12. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 1, 4-7, 13, 18, 23 and 24 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 4-7, 12, 18, 22 and 23 of copending Application No. 10/733,833. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

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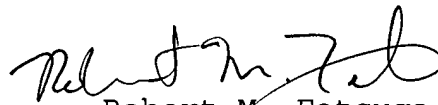
The difference in intended use wording between claim 1 of each application concerning a "hand shower" and "pull-out faucet" does not appreciably alter the claim scope, especially considering the respective specification and drawings.

14. Claims 17 and 22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of copending Application No. 10/733,833. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims recite the same subject matter but to different specificities.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

15. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

16. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.


Robert M. Fetsuga
Primary Examiner
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